



## THE ABCS OF INTERNATIONAL CONTRACTS

The purpose of all contracts is to protect the interests of everyone involved in them. International contracts, though, have to deal with problems that domestic ones can disregard. The importance of getting an international contract right can't be over-emphasized, since it will help you avoid difficulties that range from language issues to tax problems.

Any contract, obviously, must be readily understood by both the vendor and the customer. But when you're selling to a market where the native language isn't English, achieving this can get complicated. Many of your customers will want a contract written in their own tongue as well as in English, which should be simple – somebody gets the contract translated and everybody signs both versions. But it's not, in fact, that simple. Just ask Tamara Parschin-Rybkin.

Rybkin is Vice President Legal Services, General Counsel and Corporate Secretary for the **Canadian Commercial Corporation** (CCC). CCC is a federal Crown corporation whose mandate is to help Canadian exporters sell their goods in international markets, especially (although not exclusively) to foreign governments. In the course of her work, Rybkin encounters the contract-language issue time and again.

"During negotiation," she says, "it can be a major issue. Many customers use their own translators to provide a native-language version of the English contract, and may demand that the translated contract prevail in case of disputes. But if you agree to this, you have to be absolutely sure that intent of the translated version agrees exactly with the intent of the English one. If there's a dispute, you don't want your customer to claim that a clause wasn't properly translated, so your counsel has to authenticate the non-English contract very, very carefully against the English one."

Another concern relates to the law that will govern the contract. Your customer may want his country's law to apply, rather than Canada's, especially if the goods are to be used locally. "But if you're not familiar with that law," says Rybkin, "you should obtain expert local counsel to identify any clauses that might have unexpected legal

repercussions. The **Canadian Trade Commissioner Service** in our embassies and high commissions abroad can usually help you find local legal assistance and translators, if you need them. Needless to say, your contract should specify which country's laws apply to it."

Settling disputes is a third potential problem. There are two basic ways to do this: litigation through the local courts, or arbitration. It's usually a very poor idea to get involved in litigation if there's any way to avoid it, since foreign companies are often at a severe disadvantage in a local courtroom. Even if you eventually prevail, your success may not be worth the cost and effort you put into it.

Arbitration can be a much safer, faster and cheaper way of handling a dispute. "When you're dealing with a foreign buyer," says Rybkin, "their first negotiating position will be that all disputes should be settled using their own laws in their own country. You should never agree to this. At CCC, we always recommend that disputes be resolved through arbitration, and that the arbitration take place in a neutral country so the arbitrators can't be swayed by local interests."

Another thing to avoid in your contract is any commitment to dealing with customs clearance. "In negotiations," Rybkin observes, "we see many foreign buyers attempting to shift the obligation for customs clearance to the Canadian exporter. You should never accept that stipulation in a contract, particularly if your customer is a government entity. You should agree only to deliver the goods to the port of entry, and the contract should make it very clear that the customer deals with all taxes, duties, import licenses, customs clearance and so on."

---

*"With a properly written international contract, the only major issue that can come up is your own performance. You're protected from everything else."*

**Tamara Parschin-Rybkin**

Vice President Legal Services,  
General Counsel and Corporate Secretary  
Canadian Commercial Corporation

---

Depending on your type of export, taxation can also be a risk in international trade. If you're just shipping widgets to the country, and only as far as the port of entry, taxation should be a non-issue. But if, for example, you send personnel to install products your customer has bought from you, it might be a different story. Because you're working locally but your firm is non-resident in the country, you might get hit by substantial and unexpected withholding taxes when it's time to get paid. Always get competent advice on the local tax laws before you finalize your contract and include clauses that will protect you.

Customer acceptance of your product can raise other problems. In any sale where acceptance depends on the product's specifications or performance, your contract should include a "deemed acceptance" clause. This should never say something like "acceptance will be issued on the buyer's satisfaction." This can open the door to additional demands, since the buyer can claim lack of satisfaction until you comply with them. Instead, tie the acceptance to very specific conditions or events, and make sure that these won't allow the buyer to delay acceptance indefinitely.

If things were to really fall apart, of course, a customer might decide to cancel a deal altogether. Your contract should specify penalties if the customer does this without just cause, but it may be difficult to collect cancellation penalties from a foreign buyer. To protect yourself against this, you can use EDC's **Contract Frustration Insurance**, which will insure you for up to 90 per cent of your eligible losses resulting from contract cancellation.

Last but not least, advises Rybkin, your contract shouldn't

agree to open account payment terms, since they give you no protection against non-payment. If your customer insists on this as a condition of the sale, and you do agree, then protect yourself by using EDC's **Accounts Receivable Insurance**. This will cover up to 90 per cent of your losses if a customer doesn't pay.

Despite all these potential troubles, though, it's important to remember that most Canadian exporters write contracts and do business year after without encountering any serious problems. That said, if you're entering the export field for the first time, you should definitely retain counsel and, if nothing else, have them create a contract template that you can use in your negotiations. For more complex deals where contract language and local laws may raise difficulties, you should obtain professional advice from in-country experts or turn to CCC for help.

"It's our job to ensure that the Canadian exporters we work with are legally protected," says Rybkin. "We make sure their interests are expressed properly in their contracts, and that a contract doesn't contain any obligations that the exporter isn't willing to accept. And if the exporter has its own lawyers, we'll be happy to work with everyone to make sure the contract is solid."

To sum up: good contracts are good business. As your foreign business grows and your contracts work smoothly, you'll become known in your markets as a fair-minded, reliable vendor, whose deals cause no problems for your customers. With that reputation, you can look forward to more business, more sales and more international success.

Click here for more information about EDC's **insurance products**.

---

*"At CCC, we ensure that the Canadian exporters we work with are legally protected, and that they don't assume any unacceptable obligations."*

---

**Tamara Parschin-Rybkin**

Vice President Legal Services,  
General Counsel and Corporate Secretary  
Canadian Commercial Corporation

---

## MAADI GROUP BUILDS BRIDGES ABROAD



Based in Montreal, MAADI Group creates aluminum structures to meet the needs of the construction and manufacturing industries. The company has particular experience with prefabricated pedestrian bridges and marine structures, which it can ship anywhere in the world.

"MAADI began exporting in 2008 to meet its need for growth,"

says Alexandre de la Chevrotière, the company's owner. "We now sell to buyers in the Philippines and the United States, and have submitted proposals to potential customers in Kuwait and Italy."

MAADI works with EDC to investigate a customer's solvency before signing any contract. "Also," says de la Chevrotière, "when we deal with large companies that pay only when the product is ready to ship, we use EDC contract insurance to help support the project's costs. And before signing a contract, we review it with our lawyer."

"EDC allows us to realize our international projects," says de la Chevrotière. "Without that support, our growth abroad would not have been possible."

### TIPS

- › Authenticate the non-English version of your contract very carefully against the English one.
- › Have contracts reviewed by legal counsel familiar with local laws and taxes.
- › Specify arbitration, not litigation, as the dispute settlement mechanism.
- › Agree only to deliver the goods to the port of entry. Don't agree to handle customs clearance.
- › Tie customer acceptance of the goods to specific events or conditions, not to "customer satisfaction."
- › Use EDC's Contract Frustration Insurance and Accounts Receivable Insurance to protect you against contract cancellation or non-payment.